DEPARTMENT OF STATE

OFFICE OF INVESTMENT AFFAIRS
INTERNATIONAL FINANCE AND DEVELOPMENT
BUREAU OF ECONOMIC AND BUSINESS AFFAIRS
EB/IFD/OIA - Rm. 3336
WASHINGTON, D.C. 20520

Facsimile Cover Sheet

	PHONE	FAX
TO: Stephan Kinsella Schnader Harrison Philadephia, PA		215/972-7362
FROM: Linda Specht	202/736-4906	202/647-0320

DATE: January 24, 1996

MESSAGE: BIT Prototype

As promised during today's telcon, I have attached a copy of the most recent prototype U.S. Bilateral Investment Treaty. I also mailed to you a diskette containing this document and several articles pertaining to the Multilateral Agreement on Investment (MAI) currently being negotiated by OECD member states. That should arrive in several days.

Please let me know if this office can be of any further assistance.

Stephan,

These are the materials I promised in this fax. Good luck with the book.

Linda Specht

books to member states' authorities, which some may not want to do.

If the refund system can be approved, the two sides would tackle the details of the agriculture package to compensate the U.S. for tariffs increased in Austria, Finland and Sweden when they joined the EU Jan. 1, the official said. In that package, the U.S. is asking the EU to allocate by country a proposed 63,000 ton tariff-rate quota of milled rice, the official said. He said it is "possible, probable" that the EU will accept that request.

The TRQ amounts to the average annual quantity sold in three member states in the three years preceding the enlargement plus a 10 percent shipped by the U.S. and other suppliers, EU officials said. The U.S. wants the quota administered in a way that will ensure that any sales made under it are additional to its regular sales into the EU, a U.S. official said.

In addition to agriculture, the two sides still have to work out differences on the industrial side of the compensation package, sources said yesterday (Nov. 9). When negotiations broke off in Brussels, the U.S. and the EU had not reached full agreement on the reduction of semiconductor tariffs, according to an EU official. The two sides may try to move the compensation talks forward on the margins of a bilateral business dialogue meeting in Seville Nov. 10-11, the official said.

Earlier this week negotiators had not agreed on the total am- sation in the chemical sector and on tariff cuts for electronic products, according to infor- ning of this week's talks, the EU refused to lower its tariffs for semiconductor- e European industry under the condition that the U.S. cut tariffs a- participation in industry groups set up by the U.S.-Japan

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The current syste efit from a flat-rate reduction of duties wor

Canada has rejecte er ton that Canadian exporters have been uties on wheat are assessed based on the diff he price of the commodity including freig

The EU and Canada a the EU has reached an agreement with t

This is an article on MAI that appeared in a recent edition of Inside U.S. Trade. I do not have the specific vol. or page numbers

Contact name at Inside Washington Publishers Carter Daugherty tel. (703) 416-8500 (800) 424-9068 Fax (703) 416-8543

OECD INVESTMENT NEG CIPLES

Negotiators in the Organizat greement on Investment (MAI) last month d basic principles, including national treatm Adminis- tration officials. A separate group is

Agreement on these three key is step, according to a State Dept. official. Th guarantee "unqualified" MFN and national treatm nt that the pact should contain clear language on transparency group on these issues will not, however, report back to the negotiating g ued for Dec. 6-8.

Once the negotiating group agrees national treatment commitments under the accord, individual countries will then bring to the posals for exceptions – also referred to as "reservations," according to a State official. The negotiating group w most likely agree to a "general exception" for national security-related measures, the official said. Exceptions beyond this general one may be listed in an annex to the eventual agreement. There is "a general view" that exceptions should be "narrow in scope and limited in number," he said.

The main negotiating group also took up the possibility of so-called standstill and rollback commitments that would prevent the reimposition of measures that would restrict investment. There was an "inconclusive discussion" of a basic

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Earlier this week negotiators had not agreed on the total amount of compensation in the chemical sector and on tariff cuts for electronic products, according to informed sources. In the beginning of this week's talks, the EU refused to lower its tariffs for semiconductors as much as had been proposed by the European industry under the condition that the U.S. cut tariffs on passive electronics components and allow EU participation in industry groups set up by the U.S.-Japan semiconductor agreement, they said.

Instead of reducing all semiconductor tariffs that are above 14 percent to 7 percent and tariffs below 7 percent to zero on Jan. 1, 1996 as the industry proposed, EU negotiators insisted on retaining a 9 percent and two percent tariff for selected semiconductors, such as Flash EPROMs, they said. In addition, the Commission did not want to bind some of these semiconductor tariff concessions, they said.

In agriculture, the EU has asked the U.S. for a "peace clause" on challenges to the way it implements its tariff commitments on rice and wheat. U.S. wheat producers urged Deputy U.S. Trade Representative Jeffrey Lang last week not to agree to a peace clause until it is clear how the EU will change the wheat tariff system for Canada, according to informed sources.

The EU has not offered Canada the exact same refund system for wheat that it is considering in the rice dispute with the U.S., according to Canadian sources. The two sides have been exploring various options, but Canada has ruled out a rebate that would be applied to high-quality wheat irrespective of its origin, they said. Such an increase would not be "unwelcome" but would do "nothing" for Canada, they said.

The current system contains a so-called "Canada clause" that stipulates importers may benefit from a flat-rate reduction of duties worth eight European Currency Units or about $10 per ton.

Canada has rejected that provision as insufficient because it would not offset the $20-$25 per ton that Canadian exporters have been able to charge above the U.S. price. Under the current EU system, the duties on wheat are assessed based on the difference between the price ceiling negotiated in the Uruguay Round and the price of the commodity including freight charges. As a result, the higher priced wheat faces a lower duty.

The EU and Canada are expected to resume negotiations on changes to the wheat system once the EU has reached an agreement with the U.S., Canadian sources said.

OECD INVESTMENT NEGOTIATORS FORM DRAFTING GROUP ON BASIC PRINCIPLES

Negotiators in the Organization for Economic Cooperation & Development working on the Multilateral Agreement on Investment (MAI) last month directed a second working group to begin drafting language addressing a set of basic principles, including national treatment, most-favored-nation status and transparency for investors, according to Administration officials. A separate group is already drafting articles on investor protection issues.

Agreement on these three key issues is "clear-cut enough" that it was possible for negotiators to agree on this step, according to a State Dept. official. There is a consensus among negotiators that the MAI should "in principle" guarantee "unqualified" MFN and national treatment for investors, he said. OECD members are also in agreement that the pact should contain clear language on transparency requirements for investment regimes. The drafting group on these issues will not, however, report back to the negotiating group in time for its next meeting, scheduled for Dec. 6-8.

Once the negotiating group agrees on how to define MFN and national treatment commitments under the accord, individual countries will then bring to the table their proposals for exceptions -- also referred to as "reservations," according to a State official. The negotiating group will most likely agree to a "general exception" for national security-related measures, the official said. Exceptions beyond this general one may be listed in an annex to the eventual agreement. There is "a general view" that exceptions should be "narrow in scope and limited in number," he said.

The main negotiating group also took up the possibility of so-called standstill and rollback commitments that would prevent the reimposition of measures that would restrict investment. There was an "inconclusive discussion" of a basic

standstill article to the MAI. According to a State official, negotiators noted the "practical difficulty" of a blanket commitment on this issue. The official said it would be difficult to come up with language that would be broad enough to be meaningful, but at the same time would not overly restrict signatories' actions in the investment area.

The negotiators also discussed what sort of rollbacks of barriers to investment could be included in the MAI. According to the State official, there are a number of ways an MAI could dismantle such barriers. Possibilities include: periodic reviews of individual nations; sectoral reviews across national boundaries; and future rounds of sector-based negotiations. The agreement could also contain sunset clauses for particular measures. The official said that the U.S. wants to see a "substantial rollback of nonconforming measures." Some other countries have emphasized the possibility of rollbacks after a basic agreement is concluded, but the State official said it is "not clear if this is a firm policy position."

The negotiators also touched on the issue of so-called "temporary derogations" from the terms of an MAI. Temporary derogations are particularly important for countries with balance-of-payments problems that sometimes restrict the right of free currency transfer on a temporary basis. Although this is not a concern of the developed countries of the OECD, it is generally agreed that the agreement will be open to nonmember countries that might want the right to make a temporary derogation from the agreement.

Nonmember countries will "be kept informed and have the opportunity to express their views," according to a State official. The leadership of the negotiators will be in contact with so-called "dynamic nonmember economies" in the OECD, as well as "transition economies" such as those in Central and Eastern Europe. The official said accession to the OECD accord on investment would be a way for countries to establish that they have an open investment regime, and mentioned the following countries as being among the possible future signatories: Brazil, Argentina, Chile, Poland, the Czech Republic, South Korea, Singapore, Hong Kong and Taiwan.

The negotiating group also discussed what kind of definition of investment and investor should be included in the MAI. There is a consensus that the definition should be "inclusive rather than exclusive" in order to "ensure things don't slip through the cracks," the official said. One possible conceptual approach to this problem is to develop an "illustrative definition" of investment that could include some or all of the following characteristics: stocks, intellectual property rights, licenses and permits for operation, mobile and immobile assets.

Any definition of investment would also have to grapple with the fact that many business investment transactions are not easily distinguishable from cross-border transactions, according to a State official. For instance, an import of capital equipment could be a straightforward international trade transaction, or it could be in support of an actual investment. Negotiators have to be careful "not to sweep trade" into the purview of the MAI. The official said that the definition issue "needs more conceptual work" before any language can be drafted.

The other drafting group's work on investor protection language, which was the subject of a meeting late last month, is proceeding without major difficulties and the group will report to the main negotiating body Dec. 6-8. The language the group submits may have "some brackets," according to the State official. The outstanding issues in this area are "technical [and] do not reflect major policy differences," he said.

At the December meeting negotiators will continue their discussion of national treatment issues, and will take up the question of a dispute settlement mechanism for the first time. According to the State official, the "rosy scenario" for progress on the talks is that the group would reach an agreement on the basic principles of the agreement in time for the June 1996 OECD ministerial. The negotiators are not likely to take up the more controversial issues of subfederal jurisdictions and the relationship of regional economic integration organizations (REIOs) to an MAI until the basic outlines of an agreement have been reached.

HANK BROWN PREPARING AMENDMENT ON TAIWANESE WTO ACCESSION

Sen. Hank Brown (R-CO) is in the process of finalizing a resolution that would express the sense of the Congress that Taiwan's application for membership in the World Trade Organization should not be linked to China's WTO application, congressional sources said this week. Brown, a member of the Senate Foreign Relations Committee, could introduce the resolution before the end of this year, according to a congressional source.

While congressional sources said the resolution could face opposition, a similar amendment proposed by Brown in the foreign aid authorization bill was passed unanimously by the Foreign Relations Committee earlier this year. Brown is drafting a new resolution because the foreign aid bill has not yet been scheduled for floor action, although floor action has been pending on the bill since Aug. 1.

A congressional source said the resolution has no formal co-sponsors yet, but added that the resolution is "just now being written."

Brown's resolution will likely be similar to his amendment in the foreign aid authorization bill, according to congressional sources. That amendment expressed the sense of the Congress that "the United States should separate Taiwan's application for membership in the GATT/WTO from China's application for membership in those organizations," and that the U.S. should "support Taiwan's earliest membership in the GATT/WTO."

THE OECD AND INTERNATIONAL INVESTMENT NEGOTIATIONS

investment regime

The Organization for Economic Cooperation and Development (OECD) is currently negotiating to liberalize rules on international investment and the movement of capital along with increasing ~~business~~ transparency. Al Larson, Deputy Assistant Secretary of State for International Finance and Development and lead U.S. negotiator for the talks, briefed the NASDA International Trade and Investment Division Workshop attendees on the status of the OECD negotiations.

can help American firms

Secretary Larson opened his remarks by stressing the importance of foreign direct investment (FDI) in the U.S. as well as by American companies abroad. He believes that ~~American firms need~~ a physical presence abroad ~~in order to~~ directly promote U.S. exports. Since 1980, the growth in global FDI has been explosive and the need to liberalize investment procedures has grown increasingly apparent.

member countries To work Towards an agreement which provides For the Following

According to Mr. Larson, the U.S. has been urging ~~the~~ OECD ~~to institute changes in the following areas:~~

- Non-discrimination
- ~~Prohib~~ of
- Promot
- ~~Easing~~
- Elimina prohibition of restrictions
- Easing r
- Increase

This article (including suggested changes) is to appear in an upcoming edition of the National Association of State Development Agencies NASDA Letter.

The U.S. is ectors such as aviation and audi hat affect state and local governn l government is committed to le. He also mentioned that sor entives. The Secretary believes is agreement will serve as a ben 80 percent of global FDI occur come from outside the OECD.

future investment policy discussions in the WTO

Stephen Canner, ternational Business, echoed Sec ultilateral Agreement on Invest wide FDI topping $200 billion arkets to American companies.

For more information contact:
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fax (202) 898-1312

Todd Malan, Exec), also commented on the stat he U.S. Mr. Malan pointed out t idiaries of foreign corporations. ederal, state, and local governm s often the most difficult to deal going talks in the hopes that it oreign investments with a greate r, Mr. Malan pledged to continu ge an agreement that is acceptat

US Official Sees 'Broad Consensus' In OECD Talks on Direct Investment

By TARA PATEL
Special to The Journal of Commerce

PARIS — The effort by the 26 member-countries of the Organization for Economic Cooperation and Development to reach an international agreement on direct investment is on track, according to a U.S official.

Alan Larson, deputy assistant secretary for international finance and development at the U.S. State Department, said Friday that progress was made in a number of areas last week during the third round of negotiations in Paris.

The talks to reach the so-called Multilateral Agreement on Investment were launched earlier this year and are expected to last until 1997. The deal is aimed at liberalizing access to direct investment, as well as offering companies a higher level of protection for their investments in foreign countries.

The World Trade Organization, the Geneva-based group that governs most trade in goods and services, has been given observer status at the talks, but non-OECD members are not taking part.

According to Mr. Larson, there is now "broad consensus" on what protection should be given to companies for direct foreign investment.

Also, countries agree on the general exceptions that would be allowed in a future investment agreement — such as limiting investment in certain sectors for reasons of national security, public order and international peace and security obligations, he said. The key, however, will be in defining these exemptions so countries cannot use them as loopholes to block some foreign investment.

One of the most difficult facets of the future deal will be attaching to it a dispute settlement mechanism, which was also discussed last week. The mechanism for dispute settlement included in the international shipbuilding agreement, also negotiated at the OECD, could serve as a model for the future investment deal, Mr. Larson said.

Another topic brought up during talks in Paris was whether investment rules should have geographical limits or should include offshore and continental shelf operations. "This has not been decided yet," said Mr. Larson.

He said the United States wants to ensure under the deal that foreign companies are allowed to make bids from the start on state-owned companies that are being privatized or are losing their monopoly in a sector.

The talks at the OECD are not yet at this level. They also depend on the outcome of the services-liberalization talks at the WTO, which will center on sectors such as telecommunications and airlines. Many countries, including the United States, have restrictions on foreign ownership in those sectors. Such prickly issues are not expected to be discussed at the OECD until next summer.

Obstacles to getting a deal include working out provisions to bind states and provinces. The opening-up of cultural industries to foreign investment is also expected to be a difficult issue for some EU countries, as well as Canada.

Gaining access for foreign companies to government research and development programs could also pose a problem, as could assuring that foreign companies are not hit with "performance requirements" — forcing foreign companies to export a proportion of manufactured goods or buy locally produced raw materials or equipment.

TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF
CONCERNING THE ENCOURAGEMENT
AND RECIPROCAL PROTECTION OF INVESTMENT

The Government of the United States of America and the Government of (hereinafter the "Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and companies of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Recognizing that the development of economic and business ties can promote respect for internationally recognized worker rights;

Agreeing that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude a Treaty concerning the encouragement and reciprocal protection of investment;

Have agreed as follows:

ARTICLE I

For the purposes of this Treaty,

(a) "company" means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, and includes a corporation, trust, partnership, sole proprietorship, branch, joint venture, association, or other organization;

(b) "company of a Party" means a company constituted or organized under the laws of that Party;

(c) "national" of a Party means a natural person who is a national of that Party under its applicable law;

(d) "investment" of a national or company means every kind of investment owned or controlled directly or indirectly by that national or company, and includes investment consisting or taking the form of:

(i) a company;

(ii) shares, stock, and other forms of equity participation, and bonds, debentures, and other forms of debt interests, in a company;

(iii) contractual rights, such as under turnkey, construction or management contracts, production or revenue-sharing contracts, concessions, or other similar contracts;

(iv) tangible property, including real property; and intangible property, including rights, such as leases, mortgages, liens and pledges;

(v) intellectual property, including:

copyrights and related rights,

patents,

rights in plant varieties,

industrial designs,

rights in semiconductor layout designs,

trade secrets, including know-how and confidential business information,

trade and service marks, and

trade names; and

(vi) rights conferred pursuant to law, such as licenses and permits;

(e) "covered investment" means an investment of a national or company of a Party in the territory of the other Party;

(f) "state enterprise" means a company owned, or controlled through ownership interests, by a Party;

(g) "investment authorization" means an authorization granted by the foreign investment authority of a Party to a covered investment or a national or company of the other Party;

(h) "investment agreement" means a written agreement between the national authorities of a Party and a covered investment or a national or company of the other Party that (i) grants rights with respect to natural resources or other assets controlled by the national authorities and (ii) the investment, national or company relies upon in establishing or acquiring a covered investment;

(i) "ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

(j) "Centre" means the International Centre for Settlement of Investment Disputes Established by the ICSID Convention; and

(k) "UNCITRAL Arbitration Rules" means the arbitration rules of the United Nations Commission on International Trade Law.

ARTICLE II

1. With respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of covered investments, each Party shall accord treatment no less favorable than that it accords, in like situations, to investments in its territory of its own nationals or companies (hereinafter "national treatment") or to investments in its territory of nationals or companies of a

third country (hereinafter "most favored nation treatment"), whichever is most favorable (hereinafter "national and most favored nation treatment"). Each Party shall ensure that its state enterprises, in the provision of their goods or services, accord national and most favored nation treatment to covered investments.

2. (a) A Party may adopt or maintain exceptions to the obligations of paragraph 1 in the sectors or with respect to the matters specified in the Annex to this Treaty. In adopting such an exception, a Party may not require the divestment, in whole or in part, of covered investments existing at the time the exception becomes effective.

(b) The obligations of paragraph 1 do not apply to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.

3. (a) Each Party shall at all times accord to covered investments fair and equitable treatment and full protection and security, and shall in no case accord treatment less favorable than that required by international law.

(b) Neither Party shall in any way impair by unreasonable and discriminatory measures the management, conduct, operation, and sale or other disposition of covered investments.

4. Each Party shall provide effective means of asserting claims and enforcing rights with respect to covered investments.

5. Each Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain to or affect covered investments are promptly published or otherwise made publicly available.

ARTICLE III

1. Neither Party shall expropriate or nationalize a covered investment either directly or indirectly through measures tantamount to expropriation or nationalization ("expropriation") except for a public purpose; in a non-discriminatory manner; upon payment of prompt, adequate and effective compensation; and in accordance with due process of law and the general principles of treatment provided for in Article II(3).

2. Compensation shall be paid without delay; be equivalent to the fair market value of the expropriated investment immediately before the expropriatory action was taken ("the date of expropriation"); and be fully realizable and freely transferable. The fair market value shall not reflect any change in value occurring because the expropriatory action had become known before the date of expropriation.

3. If the fair market value is denominated in a freely usable currency, the compensation paid shall be no less than the fair market value on the date of expropriation, plus interest at a commercially reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation paid -- converted into the currency of payment at the market rate of exchange prevailing on the date of payment -- shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at a commercially reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

ARTICLE IV

1. Each Party shall accord national and most favored nation treatment to covered investments as regards any measure relating to losses that investments suffer in its territory owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events.

2. Each Party shall accord restitution, or pay compensation in accordance with paragraphs 2 through 4 of Article III, in the event that covered investments suffer losses in its territory, owing to war or other armed conflict, revolution, state of national emergency, insurrection, civil disturbance, or similar events, that result from:

(a) requisitioning of all or part of such investments by the Party's forces or authorities, or

(b) destruction of all or part of such investments by the Party's forces or authorities that was not required by the necessity of the situation.

ARTICLE V

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:

(a) contributions to capital;

(b) profits, dividends, capital gains, and proceeds from the sale of all or any part of the investment or from the partial or complete liquidation of the investment;

(c) interest, royalty payments, management fees, and technical assistance and other fees;

(d) payments made under a contract, including a loan agreement; and

(e) compensation pursuant to Articles III and IV, and payments arising out of an investment dispute.

2. Each Party shall permit transfers to be made in a freely usable currency at the market rate of exchange prevailing on the date of transfer.

3. Each Party shall permit returns in kind to be made as authorized or specified in an investment authorization, investment agreement, or other written agreement between the Party and a covered investment or a national or company of the other Party.

4. Notwithstanding paragraphs 1 through 3, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency or the protection of the rights of creditors;

(b) issuing, trading or dealing in securities;

(c) criminal or penal offenses; or

(d) ensuring compliance with orders or judgments in adjudicatory proceedings.

ARTICLE VI

Neither Party shall mandate or enforce, as a condition for the establishment, acquisition, expansion, management, conduct or operation of a covered investment, any requirement (including any commitment or undertaking in connection with the receipt of a governmental permission or authorization):

(a) to achieve a particular level or percentage of local content, or to purchase, use or otherwise give a preference to products or services of domestic origin or from any domestic source;

(b) to limit imports by the investment of products or services in relation to a particular volume or value of production, exports or foreign exchange earnings;

(c) to export a particular type, level or percentage of products or services, either generally or to a specific market region;

(d) to limit sales by the investment of products or services in the Party's territory in relation to a particular volume or value of production, exports or foreign exchange earnings;

(e) to transfer technology, a production process or other proprietary knowledge to a national or company in the Party's territory, except pursuant to an order, commitment or undertaking that is enforced by a court, administrative tribunal or competition authority to remedy an alleged or adjudicated violation of competition laws; or

(f) to carry out a particular type, level or percentage of research and development in the Party's territory.

Such requirements do not include conditions for the receipt or continued receipt of an advantage.

ARTICLE VII

1. (a) Subject to its laws relating to the entry and sojourn of aliens, each Party shall permit to enter and to remain in its territory nationals of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment to which they, or a company of the other Party that employs them, have committed or are in

the process of committing a substantial amount of capital or other resources.

(b) Neither Party shall, in granting entry under paragraph 1(a), require a labor certification test or other procedures of similar effect, or apply any numerical restriction.

2. Each Party shall permit covered investments to engage top managerial personnel of their choice, regardless of nationality.

ARTICLE VIII

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Treaty, or to discuss any matter relating to the interpretation or application of the Treaty or to the realization of the objectives of the Treaty.

ARTICLE IX

1. For purposes of this Treaty, an investment dispute is a dispute between a Party and a national or company of the other Party arising out of or relating to an investment authorization, an investment agreement or an alleged breach of any right conferred, created or recognized by this Treaty with respect to a covered investment.

2. A national or company that is a party to an investment dispute may submit the dispute for resolution under one of the following alternatives:

(a) to the courts or administrative tribunals of the Party that is a party to the dispute; or

(b) in accordance with any applicable, previously agreed dispute-settlement procedures; or

(c) in accordance with the terms of paragraph 3.

3. (a) Provided that the national or company concerned has not submitted the dispute for resolution under paragraph 2 (a) or (b), and that three months have elapsed from the date on which the dispute arose, the national or company concerned may submit the dispute for settlement by binding arbitration:

(i) to the Centre, if the Centre is available; or

(ii) to the Additional Facility of the Centre, if the Centre is not available; or

(iii) in accordance with the UNCITRAL Arbitration Rules; or

(iv) if agreed by both parties to the dispute, to any other arbitration institution or in accordance with any other arbitration rules.

(b) a national or company, notwithstanding that it may have submitted a dispute to binding arbitration under paragraph 3(a), may seek interim injunctive relief, not involving the payment of damages, before the judicial or administrative tribunals of the Party that is a party to the dispute, prior to the institution of the arbitral proceeding or during the proceeding, for the preservation of its rights and interests.

4. Each Party hereby consents to the submission of any investment dispute for settlement by binding arbitration in accordance with the choice of the national or company under paragraph 3(a)(i), (ii), and (iii) or the mutual agreement of both parties to the dispute under paragraph 3(a)(iv). This consent and the submission of the dispute by a national or company under paragraph 3(a) shall satisfy the requirement of:

(a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to the dispute; and

(b) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958, for an "agreement in writing".

5. Any arbitration under paragraph 3(a)(ii), (iii) or (iv) shall be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

6. Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.

7. In any proceeding involving an investment dispute, a Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

8. For purposes of Article 25(2)(b) of the ICSID Convention and this Article, a company of a Party that, immediately before the occurrence of the event or events giving rise to an investment dispute, was a covered investment, shall be treated as a company of the other Party.

ARTICLE X

1. Any dispute between the Parties concerning the interpretation or application of the Treaty, that is not resolved through consultations or other diplomatic channels, shall be submitted upon the request of either Party to an arbitral tribunal for binding decision in accordance with the applicable rules of international law. In the absence of an agreement by the Parties to the contrary, the UNCITRAL Arbitration Rules shall govern, except to the extent these rules are (a) modified by the Parties or (b) modified by the arbitrators unless either Party objects to the proposed modification.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as chairman, who shall be a national of a third state. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to the appointment of the arbitral panel except that the appointing authority referenced in those rules shall be the Secretary General of the Centre.

3. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within six months of the date of selection of the third arbitrator, and the arbitral panel shall render its decisions within two months of the date of the final submissions or the date of the closing of the hearings, whichever is later.

4. Expenses incurred by the Chairman and other arbitrators, and other costs of the proceedings, shall be paid for equally by the Parties. However, the arbitral panel may, at its discretion, direct that a higher proportion of the costs be paid by one of the Parties.

ARTICLE XI

This Treaty shall not derogate from any of the following that entitle covered investments to treatment more favorable than that accorded by this Treaty:

(a) laws and regulations, administrative practices or procedures, or administrative or adjudicatory decisions of a Party;

(b) international legal obligations; or

(c) obligations assumed by a Party, including those contained in an investment authorization or an investment agreement.

ARTICLE XII

Each Party reserves the right to deny to a company of the other Party the benefits of this Treaty if nationals of a third country own or control the company and

(a) the denying Party does not maintain normal economic relations with the third country; or

(b) the company has no substantial business activities in the territory of the Party under whose laws it is constituted or organized.

ARTICLE XIII

1. No provision of this Treaty shall impose obligations with respect to tax matters, except that:

(a) Articles III, IX and X will apply with respect to expropriation; and

(b) Article IX will apply with respect to an investment agreement or an investment authorization.

2. A national or company, that asserts in an investment dispute that a tax matter involves an expropriation, may submit that dispute to arbitration pursuant to Article IX(3) only if:

(a) the national or company concerned has first referred to the competent tax authorities of both Parties the issue of whether the tax matter involves an expropriation; and

(b) the competent tax authorities have not both determined, within nine months from the time the national or company referred the issue, that the matter does not involve an expropriation.

ARTICLE XIV

1. This Treaty shall not preclude a Party from applying measures necessary for the fulfillment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

2. This Treaty shall not preclude a Party from prescribing special formalities in connection with covered investments, such as a requirement that such investments be legally constituted under the laws and regulations of that Party, or a requirement that transfers of currency or other monetary instruments be reported, provided that such formalities shall not impair the substance of any of the rights set forth in this Treaty.

ARTICLE XV

1. (a) The obligations of this Treaty shall apply to the political subdivisions of the Parties.

(b) With respect to the treatment accorded by a State, Territory or possession of the United States of America, national treatment means treatment no less favorable than the treatment accorded thereby, in like situations, to investments of nationals of the United States of America resident in, and companies legally constituted under the laws and regulations of, other States, Territories or possessions of the United States of America.

2. A Party's obligations under this Treaty shall apply to a state enterprise in the exercise of any regulatory, administrative or other governmental authority delegated to it by that Party.

ARTICLE XVI

1. This Treaty shall enter into force thirty days after the date of exchange of instruments of ratification. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2. It shall apply to covered investments existing at the time of entry into force as well as to those established or acquired thereafter.

2. A Party may terminate this treaty at the end of the initial ten year period or at any time thereafter by giving one year's written notice to the other Party.

3. For ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments.

4. The Annex [and Protocol (if any)] shall form an integral part of the Treaty.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Treaty.

DONE in duplicate at [city] this (number] day of (month), (year], in the english and languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF

ANNEX

1. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national treatment to covered investments in the sectors or with respect to the matters specified below:

> atomic energy; customhouse brokers; licenses for broadcast, common carrier, or aeronautical radio stations; COMSAT; subsidies or grants, including government-supported loans, guarantees and insurance; state and local measures exempt from Article 1102 of the North American Free Trade Agreement pursuant to Article 1108 thereof; and landing of submarine cables.

Most favored nation treatment shall be accorded in the sectors and matters indicated above.

2. The Government of the United States of America may adopt or maintain exceptions to the obligation to accord national and most favored nation treatment to covered investments in the sectors or with respect to the matters specified below:

> fisheries; air and maritime transport, and related activities; banking* insurance* securities* and other financial services*.

*Note: if the Treaty Partner undertakes acceptable commitments with respect to all or certain financial services, the Government of the United States of America will consider limiting these exceptions accordingly, so that, for example, particular obligations as to treatment would apply on no less favorable terms than in the North American Free Trade Agreement.

3. The Government of may adopt or maintain exceptions...

4. Notwithstanding paragraph 3, each Party agrees to accord national treatment to covered investments in the following sectors:

> leasing of minerals or pipeline rights-of-way on government lands.